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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 13

Application Number: 09/469,206
Filing Date: December 21, 1999
Appellant(s): PUGACZEWSKI ET AL.

Jeremy J. Curcuri
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11 June, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-10 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Group I: Claims 1 and 4.

Group II: Claims 1, 2, and 4.

Group III: Claims 1, 3, 4, 6, 7, and 9.

Group IV: Claims 1, 4, and 5.

Group V: Claim 8.

Group VI: Claim 10.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of the claims under appeal.

6,307,836	JONES et al.	10-2001
6,377,554	FARNSWORTH et al.	04-2002
6,292,834	RAVI et al.	09-2001
5,953,338	MA et al.	09-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 4 are rejected under 35 U.S.C. 102(e). This rejection is set forth in prior Office Action, Paper No. 9.

Claims 2, 3, and 5-10 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 9.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Jones et al. (6,307,836).

3. For claim 1, Jones teaches (see abstract) a computer readable storage medium having instructions stored thereon (col. 8, lines 60-67), the instructions being executable by a computer (col. 8, lines 50-60) to provide, to a user (Fig. 1, #104), a user interface (Fig. 1, #118) to a network management system (Fig. 1) for configuring a network connection (col. 1, lines 5-12) between a provider access point (Fig. 1, #110) and a user access point (Fig. 1, #106) over a network (Fig. 1, #128, 130) including a permanent virtual circuit (Fig. 1, #130 and col. 10, lines 33-46) between a switch (Fig. 1, #108) and the user access point, the medium further comprising:

a. Instructions for providing a user interface to the user at the user access point that interfaces the user with the network management system (col. 4, lines 45-50) and that directs the user to select a connection bandwidth for the permanent virtual circuit between the switch and the user access point (col. 4, lines 50-63);

b. Instructions for receiving at the network management system, through the user interface, a message indicative of a selected bandwidth from the user (Fig. 1, #122); and

c. Instructions for remotely provisioning the switch with the network management system in response to receiving the message to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth thereby allowing the user, from the user access point, to interface with the network management system and select a bandwidth that is, in turn, provisioned as the connection bandwidth between the switch and the user access point (col. 4, lines 53-63 and col. 5, lines 5-10).

4. As for claim 4, Jones also teaches instructions for authenticating the user prior to remotely provisioning the switch (Fig. 4, #406).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones as applied to claims 1, 4 above, and further in view of Farnsworth et al. (6,377,554).

7. For claim 2, Jones does not expressly disclose the time limits, but does teach that the connection bandwidth is limited by a previous bandwidth (col. 6, lines 7-11). Farnsworth teaches that there are:

a. Instructions for directing the user to select a time duration for the selected connection bandwidth (col. 2, lines 35-36);

b. Instructions for receiving a message indicative of a selected duration (col. 2, lines 35-36, where it is obvious that a server can receive the information that it requests); and

c. Instructions for, upon the expiration of the selected duration after remotely provisioning the switch to limit the connection bandwidth by the selected bandwidth, remotely provisioning the switch with the network management system to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the previous bandwidth (col. 2, lines 29-51).

12. Farnsworth also teaches many of the limitations in claim 1 (abstract; Fig. 2-6; col. 1, lines 5-15). At the time the invention was made, one of ordinary skill in the art would have placed

Farnsworth timers on the Jones system so as to limit thrashing and to provide a more cost-effective system (col. 1, lines 62-67).

13. Claims 3, 6, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones as applied to claims 1, 4 above, and further in view of Ravi et al. (6,292,834).

14. For claims 3 and 6, Jones teaches a user interface, as shown above, but does not necessarily disclose that the interface is graphical. Ravi discloses a GUI within a browser (Fig. 3, #240). Ravi also teaches many of the limitations drawn in claim 1 (abstract, Fig. 1-4, col. 3, lines 10-40). At the time the invention was made, one of ordinary skill in the art would have used a Ravi GUI as the Jones user interface in order to make the Jones system more user friendly.

15. Claim 7 is the underlying method for the system drawn in claims 1 and 3. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claims 1 and 3 are rejected, then claim 7 is also rejected for the reasons above.

16. Claim 9 is the underlying method for the system drawn in claim 4. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claim 4 is rejected, then claim 9 is also rejected for the reasons above.

17. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones as applied to claims 1, 4 above, and further in view of Ma et al. (5,953,338).

18. For claim 5, Ma also teaches that the network includes a plurality of subnets (col. 3, lines 16-17), each subnet having a corresponding element type (col. 3, lines 17-19) and including at

least one programmable element of that type (col. 3, lines 9-15), each element type having a corresponding element manager (col. 3, lines 19-22), the medium further comprising:

a. Instructions for determining a route made up of links over the network from the provider point to the user point, wherein a network-to-network link connects a pair of adjacent subnets having elements of different types and a network logical link provides a path across a subnet (col. 3, lines 23-30); and

b. Instructions for establishing a connection across each subnet on the route by sending a request to the corresponding element manager to program the at least one subnet element in accordance with the network logical link across that subnet, and for establishing a network-to-network connection between adjacent subnets on the route in accordance with the network-to-network link between those adjacent subnets to provide the network connection between the provider point and the user point (col. 3, lines 31-41).

19. Ma also teaches many of the limitations in claim 1, as shown in the last office action and as acknowledged by the applicants in remarks, Pp 4-5. Jones teaches that there are multiple networks (col. 1, lines 19-35), but does not expressly disclose its usage within the system, although it would be obvious that users would be on one of several environments given the history and structure of today's Internet. At the time the invention was made, one of ordinary skill in the art would have used Ma's subnet structure to combine several nods of Jones in order to better help Jones manage its users (col. 4, lines 13-33).

20. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Ravi as applied to claim 7 above, and further in view of Farnsworth, as applied to claim 2 above.

21. Claim 8 is the underlying method for the system drawn in claim 2. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claim 2 is rejected, then claim 8 is also rejected for the reasons above.

22. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Ravi as applied to claim 7 above, and further in view of Ma, as applied to claim 5 above.

23. Claim 10 is the underlying method for the system drawn in claim 5. The prior art teaches that a system implementation is functionally equivalent to the underlying method. Therefore, if claim 5 is rejected, then claim 10 is also rejected for the reasons above.

(11) Response to Argument

In the remarks, applicant argued in substance the following single point:

(A) Prior Arts do not disclose or suggest remotely provisioning the switch...in response to receiving the message to throttle the network connection at the switch.

Applicant states that "Jones connects the user signal through the local switch fabric to the transport network bandwidth using a handshaking technique as opposed to the claimed technique of throttling the network connection at the switch in response to receiving a message."

According to claims 1 and 4, the claimed process is that the switch receives a message to throttle the network connection, sends a request to provide identity information, receives said information for said authentication purposes, and then responds to the request. The examiner notes that this model fulfills the classic definition of a handshake, in which messages are transmitted back and forth between two computers to set up a communication. (A dictionary definition has been included in the file.) The claims do not expressly draw a limitation in which the switch responds with an acknowledgement confirming whether it was able to comply, but the absence of a step does not indicate patentability.

At any rate, the original rejection is valid as long as the steps above are part of the Jones handshaking process, even if the handshaking process results in other activities. By definition, the Jones handshaking must include the user sending a message to change the bandwidth (also shown in Fig. 4, and col. 6, lines 50-56, and col. 7, lines 25-31). From there, it is clear that the switch changes the bandwidth, as shown before, and conceded by the applicant (Page 9, Paragraph 1). Thus, the only issue is whether the bandwidth change is in response to the message, which is shown in the teachings (col. 9, lines 45-50, and Fig. 4). The details of this are further illustrated in col. 10, lines 55-67 and col. 11, lines 20-55. This process occurs even after connection to the system (col. 6, lines 50-56). Thus the claim 1 rejection stands, due to the evidence presented above.

Even if Jones does not expressly disclose this particular function, this limitation is not considered by the examiner to be novel enough to merit allowance of a case. If a switch can perform a certain function, and if a user can select an option to request the function be

performed, then it would be obvious to one of ordinary skill in the art that the user could send a request and the switch respond to it, unless such an action would destroy the reference.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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MHP
August 20, 2003

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